JUDGMENT

FILED: June 8, 2004

UNITED STATES COURT OF APPEALS

for the

Fourth Circuit

NO. 03-1840
CA-02-4129-8-PJM

LANHAM FORD, INCORPORATED, d/b/a Darcars Ford

Plaintiff - Appellant

v.

FORD MOTOR COMPANY

Defendant - Appellee

Appeal from the United States District Court for the District of Maryland at Greenbelt

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In accordance with the written opinion of this Court filed this day, the Court affirms the judgment of the District Court.

A certified copy of this judgment will be provided to the District Court upon issuance of the mandate. The judgment will take effect upon issuance of the mandate.

s/ Patricia S. Connor
CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

LANHAM FORD, INCORPORATED, d/b/a Darcars Ford,
Plaintiff-Appellant,
v. No. 03-1840
FORD MOTOR COMPANY,
Defendant-Appellee

Appeal from the United States District Court
for the District of Maryland, at Greenbelt
Peter J. Messitte, District Judge.
(CA-02-4129-8-PJM)

Argued: May 6, 2004

Decided: June 8, 2004

Before WIDENER, LUTTIG, and TRAXLER,
Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

ARGUED: Brad D. Weiss, CHARAPP & WEISS, L.L.P., Washington, D.C., for Appellant. David Adam Last, SUTHERLAND, ASBILL & BRENNAN, L.L.P.,

Washington, D.C., for Appellee. **ON BRIEF:** Jennifer L. Rasile, CHARAPP & WEISS, L.L.P., Washington, D.C. for Appellant. Nicholas T. Christakos, SUTHERLAND, ASBILL & BRENNAN, L.L.P., Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Appellant Lanham Ford, Inc. (Lanham) seeks review of the district court's denial of its motion to remand to state court and dismissal of its lawsuit against appellee Ford Motor Company (Ford). After Ford notified Lanham that it intended to terminate Lanham's Ford franchise on the basis of poor sales performance and personnel turnover, Lanham invoked its right under its Dealer Agreement with Ford to appeal any franchise termination decision to the Ford Policy Board. The Policy Board, however, ultimately rejected Lanham's claims.

Dissatisfied with this result, and claiming that its right under the Dealer Agreement to a full, fair and objective hearing before the Policy Board had been violated by the Board's refusal to grant Lanham access to discovery of Ford documents, Lanham brought suit seeking declaratory and injunctive relief against Ford in Maryland state court. In particular, Lanham sought in its lawsuit to compel Ford to grant Lanham a new hearing before the Ford Policy Board, and to enjoin termination of the franchise pending the outcome of such hearing.

Ford then removed the case to the United States District Court for the District of Maryland pursuant to 28 U.S.C. § 1441, asserting that the district court had diversity jurisdiction over the parties. Lanham subsequently filed a motion for remand to state court. Ford answered not only by opposing remand, but also by moving for dismissal under Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which relief can be granted. After a hearing, the district court issued an order and memorandum opinion denying Lanham's motion to remand, but granting Ford's motion to dismiss. On Lanham's appeal from both of these adverse rulings, we affirm.

I.

Because the parties to this lawsuit are citizens of different states, the district court's denial of Lanham's motion to remand must be affirmed provided "the matter in controversy exceeds the sum or value of $75,000." *See* 28 U.S.C. § 1332(a). The district court held that the "amount in controversy" requirement was satisfied, reasoning that the object of the litigation was the dealership itself and that the value of the dealership was more than $75,000.

The district court erred in its conclusion that the object of the litigation was the dealership itself. Though it is doubtless true that Lanham's ultimate strategic goal is to retain the dealership and the Ford Motor franchise, the object of the present litigation is narrower than this goal. In the present litigation, Lanham seeks only a new hearing before the Policy Board, with rights of full discovery, and an injunction against termination of the franchise pending completion of this new hearing. This requested relief, and not the dealership itself, constitutes the object of the present litigation.

While the value of a new hearing and temporary reprieve from termination of the franchise pending completion of that hearing is not as readily apparent as the value of a new car with a price tag affixed, we reject the notion that this value is "'too speculative and immeasurable to satisfy the amount in controversy requirement,'" Appellant's Br. at 17 (quoting *Gonzalez v. Fairgale Properties Co.*, 241 F. Supp. 2d 512, 518 (D. Md. 2002)). From Lanham's perspective, the value of this requested relief is the sum of (i) the value to Lanham of the right to operate its Ford franchise until completion of a new hearing, and (ii) the value to Lanham of the hearing itself, which is roughly equivalent to Lanham's chance of success at retaining its franchise by going through this hearing, multiplied by the value of Lanham's franchise as a going business concern.

We could remand to the district court for findings as to the value of each factor in this equation. But we do not believe that such is necessary. Given that Lanham is a sizeable dealership, with total sales in 2002 in excess of $56 million and gross profits for that year in excess of $7 million; the district court's sound factual finding that Lanham has a positive net worth when business goodwill is taken into account, J.A. 210-12; and the likelihood that the completion of a new hearing on the terms Lanham requests would take several months at least, *see* J.A. 89, we are confident that the value which would be yielded by the above-described formula would be in excess of $75,000. In the unlikely event that the value of the right to operate for several additional months would not, by itself, exceed the jurisdictional threshold, certainly the value of that right *plus* the value of the chance to retain its franchise through pursuit of a new hearing would raise the amount in controversy to a level in excess of the $75,000 required. Accordingly, albeit on the alternative grounds described, we affirm the

district court's order denying Lanham's motion to remand.

II.

Having determined that the requirements for subject matter jurisdiction are met, we turn briefly to the merits of this case. The district court dismissed Lanham's claims against Ford on the basis that none of Lanham's contentions respecting the alleged unfairness of the Policy Board hearing stated a cause of action either for breach of the Dealer Agreement or for breach of Maryland Law:

> Summing up, however minimal the Policy Board's procedures may have been, however informal the hearing before the Board may have been, Ford motor complied with all procedures agreed upon by the parties. The Court cannot require Ford Motor to do more. Accordingly, Ford Motor's Motion to Dismiss will be GRANTED.

J.A. 214. After considering the Dealer Agreement itself and the arguments raised by the parties, we can find no fault with the district court's justification for ordering dismissal.

CONCLUSION

For the reasons stated herein, the judgment of the district court is affirmed.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LANHAM FORD, INC.,	*	
	*	
Plaintiff	*	
	*	
v.	*	Civil No. PJM 02-4129
	*	
FORD MOTOR COMPANY,	*	
	*	
Defendant	*	

OPINION

I.

This diversity action, in which the plaintiff seeks only injunctive and declaratory relief, was removed here from the Circuit Court for Prince George's County, Maryland. Plaintiff Lanham Ford has filed a Motion to Remand, arguing, inter alia, that the amount in controversy does not exceed $75,000, as required by 28 U.S.C. § 1332. In a Memorandum Opinion dated February 24, 2003, the Court found that the value of the relief sought is that of Lanham Ford's prospective loss of its dealership and allowed Defendant Ford Motor Company (Ford Motor) limited discovery to establish the value of the dealership. In particular, Ford Motor was given 20 days to request Lanham Ford's income tax returns, balance sheets and other appropriate financial information for the last three years and to conduct relevant depositions. That discovery is now complete and the parties have filed supplemental pleadings n support of their original positions. On the basis of the record before the Court, the motion to Remand will be DENIED.

Ford Motor also has pending a Motion to Dismiss, which Lanham Ford opposes. The Court will GRANT that Motion.

II.

Lanham Ford is a licensed Ford dealership operating in Lanham, Maryland. It is a franchisee of Ford Motor pursuant to a Ford Sales & Service Agreement ("Dealer Agreement"). In February, 2002, Ford Motor sent a letter to Lanham Ford indicating its intention to terminate the Dealer Agreement on the basis of Lanham Ford's poor sales performance and personnel turnover. Pursuant to the Dealer Agreement, Lanham Ford appealed to the Ford Policy Board[1] and also filed a Complaint with the Maryland Motor Vehicle Administration. Lanham Ford asked Ford Motor to provide certain documents and access to information but Ford Motor refused. The parties thereafter appeared before the Policy Board, which affirmed the notice of termination, effective 30 days thereafter.

Lanham Ford then filed suit in the Prince George's County Circuit Court, following which the case arrived here. Lanham Ford complains that Ford motor provided it with insufficient due process prior to and during the hearing before the Policy Board and asks this Court to grant it a new hearing with additional due process rights.

III.

In its Motion to Remand, Lanham Ford argues that Ford Motor has failed to present prima Facie evidence that the amount in controversy satisfied the $75,000 jurisdictional

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[1] The Dealer Agreement provides that any challenge to the termination of a dealership "shall be appealed by the Dealer to the Policy Board" and that such an appeal is a "condition precedent to the Dealer's right to pursue any other remedy."

threshold for federal jurisdiction. See 28 U.S.C. § 1332(a); see also Lupo v. Human Affairs Int'l., Inc., 28 F.3d 269, 273-4 (2d Cir. 1994) (holding that the burden is on defendant, as the party invoking removal jurisdiction, to establish the existence of a sufficient amount in controversy). It reiterates the argument that the object of the litigation is the parties' franchise agreement. The Court rejected this argument in its February, 2002 Memorandum Opinion and does not intend to revisit it at this time.

Assuming that the object of the litigation is the dealership, Lanham Ford claims that Ford has not shown that it is worth more than $75,000. Lanham Ford suggests that at the end of 2002, it had a negative net worth of approximately 4.7 million dollars and that for the month of December, 2002, its operating profit was a negative $75,134. Lanham Ford also attacks the testimony of A.N. Gosline, offered by Ford, in which he declares that the value of the dealership is over $75,000. Lanham Ford notes that Gosline is neither certified nor qualified as a valuation expert or appraiser and that his valuation was based on assumptions and guesses.

Ford Motor takes two possible approaches to valuing the dealership, either of which, it says, demonstrates that the value exceeds $75,000. First the dealership is an ongoing concern, generating significant sales, possessing substantial goodwill and a value in excess of $75,000. Second, even if the "value" of Lanham Ford is less than $75,000, the financial impact on Ford motor of termination of the dealership would exceed $75,000.

The Court finds that the value of the dealership exceeds $75,000. The Court declines to base that value on Lanham Ford's reported net worth. Generally, businesses undervalue intangible assets when calculating net worth in accordance with

generally accepted accounting principles. Courts are not bound by these valuations. In one extreme case, for example, a plaintiff company listed the value of all its intangible assets such as patents and goodwill as being worth one dollar for tax purposes. The court stated that "[s]uch fictitious listing and reporting, which are in accordance with almost universally accepted accounting practice, are not admissions on the plaintiff's part that its goodwill is not worth more than one dollar. But even it [sic] they were, this court would not be bound by such admissions for the purpose of determining its jurisdiction over the subject matter of the actions." Gen. Elecs. Co. v. Sabreen, 128 F. Supp. 900, 901 (E.D. Pa. 1953).

In another case in which a dealership's net profit was less than the jurisdictional minimum (then $10,000), the court held that the value of the dealership nevertheless satisfied the jurisdictional requirement. Corwin Jeep Sales & Serv., Inc. v. Am. Motor Sales Corp., 670 F. Supp. 591, 596 (M.D. Pa. 1986) ("... Corwin's net profit in 1985 was $9,784. While of course these figures do not establish conclusively the value of Corwin's dealership, we find that in view of these figures it cannot be said to a legal certainty that the respective rights of the parties under the franchise agreement fail to meet the jurisdictional amount requirement.").

Similarly, common sense suggests that a potential buyer of the dealership would set little store by Lanham Ford's negative net worth. Far more likely, the prospective buyer would place a positive value on the dealership's assets and goodwill because these are what would determine the dealership's real potential for future sales. Lanham Ford's financial documents show that in 2002 it had nearly $56 million in total sales. It made over $7 million in gross profit on these sales. In December of 2002, it had total assets of $16,482,315 and over $560,000 in cash or

equivalents on hand.

All this suggests to the Court that Ford Motor has demonstrated that the amount in controversy exceeds the $75,000 jurisdictional minimum required under 28 U.S.C. § 1332(a).

IV.

Ford Motor's Motion to Dismiss proceeds on several grounds. Most persuasively, it argues that there is no basis for the "due process" rights to which Lanham Ford claims entitlement.[2] Lanham Ford responds that its right to a fair and impartial hearing before the Policy Board is implicit in the structure of the arbitration process that the Dealer Agreement establishes. If it were not entitled to fully prepare and present its case, says Lanham Ford, the process would be futile. Lanham Ford also argues that Ford motor has violated the good faith requirement imposed by Maryland Code, Transportation, § 15-206.1[3] and that the hearing before the

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[2] Ford Motor also argues that Lanham Ford is in effect seeking an injunction against the Motor Vehicles Administration proceeding, which is barred by the Anti-Injunction Act. Because the Court decides this case on other grounds, it need not address this argument.

[3] Section 15-206.1 provides:
"Good Faith
(a) Defined. – In this section, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
(b) Required. – A manufacturer, distributor, or factory branch, whether directly or through an agent,

Policy Board was so fundamentally unfair that its decision is invalid under the Maryland Uniform Arbitration Act, Md. Code. Ann. § 3-201, et seq.

The Court is unmoved by Lanham Ford's argument. The Dealer Agreement does not provide for any particular "due process" rights, stating simply that:

> Any protest, controversy or claim by the Dealer ... with respect to any termination or nonrenewal of this agreement by [Ford] ... shall be appealed by the Dealer to the Policy Board within fifteen (15) days after the Dealer's receipt of notice of termination or nonrenewal ... Appeal to the Policy Board shall be a condition precedent to the Dealer's right to pursue any other remedy available under this agreement or otherwise available under law.

The Agreement makes no mention of what rights exist with regard to the appeal. Moreover, the Policy Board handbook provides that "all proceedings of the Board are informal" and that the Policy Board is not obligated to provide any information requested by the Dealer unless "the Board has agreed to provide it." The record demonstrates that Ford motor complied with these minimal procedures. The Court is not at liberty to require Ford Motor to do more. See, e.g. Suburban Hospital, Inc. v. Dwiggins, 496 A.2d 1069, 1077 (Md. 1991) ("Unless some public policy is implicated, employee grievance mechanisms should be analyzed only for what they offer, they must not be seen automatically as quasi-judicial forums for final and impartial dispute resolution

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> employee, or representative, may not fail to act in good faith."

governed by standards of due process and neutral fairness.").

Nor has Ford Motor acted in violation of any statutory requirement of good faith. In general, a duty of good faith does not "interpose new obligations about which [a] contract is silent, even if inclusion of the obligation is thought to be logical and wise." E. Shore Mkts. Inc., v. J.D. Assoc. Ltd. P'ship., 213 F.3d 175, 184 (4th Cir. 2000). Good faith requires only that "one party to a contract not frustrate the other party's performance." Id. Ford Motor did not prevent Lanham Ford from exercising its right under the Dealer Agreement to appeal the proposed termination of its Dealer Policy Board. To the extent that Ford Motor may not have provided due process-like procedures, no breach of good faith is involved. Nothing in the Dealer Agreement obliges Ford Motor to provide such procedures.

The Maryland Uniform Arbitration Act has no relevance here. The Policy Board hearing was not an arbitration and is not governed by the Act. The Maryland Court of Appeals has defined an "arbitration award" as a "decision of an extrajudicial tribunal which the parties themselves have created, and by whose judgment they have mutually agreed to abide." Chillum-Adelphi Volunteer Fire Dep't v. Button & Goode, Inc., 219 A.2d 801, 806, 242 Md. 509, 516 (Md. 1966) (quotations omitted). The Dealer Agreement provides that "[a]ny decision of the Policy Board shall be binding on [Ford] but shall not be binding on the Dealer." Since Lanham Ford was not bound by the Dealer Policy Board's decision, it cannot fairly be deemed an "arbitration award." Indeed, the Agreement provides for a separate arbitration proceeding if the Dealer is unsatisfied with the decision of the Dealer Policy Board. This is the clearest indication that the Policy Board hearing was not an arbitration.

Summing up, however minimal the Policy Board's procedures may have been, however informal the hearing before the Board may have been, Ford Motor complied with all procedures agreed upon by the parties. The Court cannot require Ford Motor to do more. Accordingly, Ford Motor's Motion to Dismiss will be GRANTED.

A separate Order follows implementing this Opinion.

June 23, 2003

/s/

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LANHAM FORD, INC.,	*	
	*	
Plaintiff	*	
	*	
v.	*	Civil No. PJM 02-4129
	*	
FORD MOTOR COMPANY,	*	
	*	
Defendant	*	

FINAL ORDER OF JUDGMENT

For the reasons stated in the foregoing Memorandum Opinion, it is this 23rd day of June, 2003, ORDERED:

1) Lanham Ford's Motion to Remand (Paper No. 10) is **DENIED**;
2) Ford's Motion to Dismiss (Paper No. 6) is **GRANTED**;
3) Final Judgment is **ENTERED** in favor of Defendant Ford and against Plaintiff Lanham Ford;
4) The Clerk of the Court shall **CLOSE** this case; and
5) The Clerk of the Court shall **MAIL** copies of this Order to counsel for both parties.

/s/
PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE